Complaint Handling

Lodging of Complaints

4.1 Most complaints come in by post. Some complainants visit our Office in person and are received by my counter staff. If appropriate, duty officers will interview them and take down details of their cases direct. We also accept complaints via e-mail and for simple initial cases, complaints by telephone[1].

Fig. 4.1 **Mode of lodging complaint**

Mode	**Number**
In person	425
In writing -	
by letter	682
by complaint form	1,270
by fax	978
by e-mail	613
By phone	414
TOTAL	**4,382**

Regardless of the mode of complaint, we require the names and contact addresses of the complainants. We must be satisfied, too, that they are the aggrieved parties. These are requirements prescribed by The Ombudsman Ordinance.

Assessment

4.2 My counter staff, duty officers and Assessment Team constitute the front-line of my Office. Members of the team scrutinise all in-coming complaints and enquiries. Where a matter is subject to restrictions **(Fig. 2.2)** or falls outside my purview **(Fig. 2.3)** under the Ordinance, we aim to notify complainants within 15 working days. Where possible, we will try to help and advise where they may seek assistance or redress.

4.3 Complaints within my purview are "screened in" and passed to a designated investigation team for examination. Each team is headed by a Chief Investigation Officer working to one of my two Assistant Ombudsmen.

4.4 To determine whether to undertake an investigation, we conduct preliminary inquiries for relevant facts and information. Where warranted, further action may then be by alternative dispute resolution or full investigation. Whichever method is employed, we endeavour to help as much as we can. Where we cannot investigate, we will still counsel as a social worker would.

Alternative Dispute Resolution

4.5 With relatively simple and straightforward complaints, we adopt more flexible and amicable methods for readier resolution:

- Internal Complaint Handling Programme (INCH);
- Rendering Assistance/Clarification (RAC); and
- Mediation.

1 General conditions for complaints by telephone:
- complainant must provide name and correspondence address;
- complaint can be explained in less than 15 minutes;
- complaint should not involve more than two organisations; and
- conversation would be tape recorded.

Fig. 4.2 **Alternative dispute resolution**

Type	Method	Cases concluded
INCH	With the consent of complainants, simple cases are referred to organisations for investigation and reply. The Ombudsman monitors the process and intervenes where the reply is not satisfactory.	176
RAC	The Office conducts extensive preliminary inquiries and presents findings with observations to the complainant. The Ombudsman may suggest improvement on systemic problems.	1,996
Mediation	This is a voluntary process where complainants and representatives of the organisations concerned agree to meet. Investigators from this Office act as impartial facilitators of the dialogue.	6

The organisations under complaint are directly involved in varying degrees. For INCH cases, they have the opportunity to conduct their own investigation and initiate direct dialogue with the complainants under The Ombudsman's watching brief.

Full Investigation

4.6 For cases that are complex or involve issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, I will direct a full investigation. The process involves extensive inquiries, evidence collection and at times consultation with members of our Panel of Professional Advisers. They are experts of excellent standing in the legal, medical and engineering fields **(Annex 13)** whom I have appointed under Section 6A of the Ordinance to advise and assist me.

Fig. 4.3 **Powers of investigation**

- Entry on premises
- Summoning of witnesses
- Access to documents including classified documents
- Penalty for not cooperating with The Ombudsman's investigation

4.7 The organisation under complaint is given every opportunity to comment and to make representations on my draft investigation report. Individuals subject to our criticism are specifically given an opportunity to be heard. Where appropriate, we recommend administrative remedies for

improvement. Our aim is to make for more open and client-oriented, transparent and accountable public administration. Heads of organisations have a duty to report to me at regular intervals the progress of their implementation of my recommendations.

Code on Access to Information

4.8 In March 1995, Government introduced an administrative Code on Access to Information on a pilot basis in furtherance of open and accountable government. The Code was extended progressively to all Government bureaux and departments in December 1996.

4.9 Where a bureau or department fails to comply with the Code, an applicant may lodge a complaint with me to seek a review of the initial decision by the organisation in receipt of the request for information. During the reporting period, we dealt with four such complaints by way of RAC.

Inter-departmental Co-ordination

4.10 Whilst we examine each case independently, there are occasions where the "pattern" of complaints calls for a more global review of continuing problems.

Seepage : A Misconception of Responsibilities

4.11 We mentioned seepage in our 2001/02 Annual Report. This continues to be a "popular" complaint. Three departments - Food and Environmental Hygiene, Buildings and Water Supplies - each has a specific role for different aspects of seepage. Invariably, they do what they can within their purview. However, members of the public are often not aware of (or not willing to accept) the division and limitation of their responsibilities: readily and regrettably, they form the impression that the departments are "passing the buck".

4.12 We remain of the view that property owners have a primary responsibility to maintain their own premises, including repair to seepage. Mutual co-operation among neighbours is most important for identifying the source of seepage and arranging the solution.

"Buck-passing"

4.13 From time to time, implementation of policies calls for inter-departmental co-ordination. Generally speaking, departmental responsibilities are defined and procedures for co-ordination also drawn up by Government. However, these procedures cannot possibly cover all conceivable situations. When grey areas surface, departments disclaim responsibilities and engage in bureaucratic "buck-passing". Meanwhile, complainants receive cold shoulders pending resolution of responsibilities and naturally, become frustrated and aggrieved.

Fig. 4.4 **A typical case**

- Complainant requested assistance from Drainage Services Department (DSD) on repair of damaged stream bank/retaining wall adjacent to his house.
- DSD referred case to Home Affairs Department (HAD) pursuant to a Technical Circular issued by then Works Bureau.
- HAD disclaimed responsibility.
- Protracted argument over the responsibility between DSD and HAD.
- Case referred to Lands Department (Lands D) without checking the land status at the outset.
- Lands D adopted "wait-and-see" attitude, spanning about 11 months.
- After 17 months of argument, confirmed that the problem fall within Systematic Identification of Maintenance Responsibility of Slope records. Technical Circular not applicable.
- Responsibility of repair by Lands D finally confirmed by Civil Engineering Department.

(Case summary at **Annex 12**)

Protracted Consultation

4.14 Another scenario depicts repeated and protracted inter-departmental "consultation" to the point of procrastinating and holding up action for an excessively long period. This suggests that the departments concerned are afraid of taking decisions and hope to find some "reason" for an excuse not to act.

Fig. 4.5 **A typical case**

- An athletic association applied to Lands Department (Lands D) to change the terms of the short-term tenancy for the addition of driving range facilities in their sportsground.
- Lands D examined the application in consultation with Government departments concerned.
- Lands D repeatedly asked departments for clarification of issues on which they had already made clear their position:

  (a) consulted Planning Department several times on the same issue even after the latter had stated that planning permission for the proposed use of the sportsground was not required;

  (b) consulted Home Affairs Bureau even after the latter had stated its view about auditing the financial statements of the association.

- Home Affairs Department conducted consultation with local residents repeatedly.

- With several rounds of inter-departmental meetings and numerous exchanges of correspondence, the application was rejected 26 months after its submission.

  (Case summary at **Annex 12**)

4.15 Neither scenario is conducive to efficient or effective administration. Both cases point to reluctance to take a further step in the public interest and a lack of consideration for the complainants or the community. Such tactics and inter-departmental debates reflect poorly on Government. In such cases, this Office has had to raise matters with the policy bureaux to iron out the bureaucratic red tape among departments.

Reports to the Chief Executive

4.16 The problem of unauthorised building works (UBW) in the New Territories was the subject of a direct investigation in 1996 on which The Ombudsman made a number of recommendations to curb the problem. Our investigation into a recent complaint (Case summary at **Annex 12**) suggested that the problem might have reached an unacceptable level. This case indicated that the Housing, Planning and Lands Bureau (HPLB), Buildings Department and Lands Department had not adequately implemented our recommendations. My concern is that massive disregard for law enforcement would breed disrespect for the law and the Administration. Consequently, I invoked Section 16(3) of The Ombudsman Ordinance and reported the matter in October 2002 to the Chief Executive, who directed HPLB to follow up. By the end of this reporting year, my Office was in active discussion with the Bureau. Depending on its response, I may make a further report to the Chief Executive and consider another direct investigation into the problem.

Fig. 4.6 Section 16(3) of The Ombudsman Ordinance

Where a report under subsection (1) to a head of the organisation is not, in the opinion of The Ombudsman, adequately acted upon -

(a) within the time specified in the report; or

(b) if no time is specified in the report, within such times as The Ombudsman is of the opinion is reasonable in all the circumstances,

The Ombudsman may submit the report and recommendations, together with such further observations as he thinks fit to make, to the Chief Executive.

4.17 We completed an investigation into a complaint against Leisure and Cultural Services Department on the use of public swimming pools. Our recommendations called for the right balance on the use of facilities by both swimming clubs and members of the public. Following my announcement of the investigation in July 2002, an association of swimming coaches made representations to the Chief Executive

to question the propriety of our findings. Accordingly, I presented my observations to the Chief Executive (Case summary at **Annex 12**).